

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADRIAN SCHOOLCRAFT,

10CV6005(RSW)

Plaintiff,

-against-

DECLARATION OF
BRIAN E. LEE

THE CITY OF NEW YORK, DEPUTY CHIEF MICHAEL MARINO, Tax Id. 873220, Individually and in his Official Capacity, ASSISTANT CHIEF PATROL BOROUGH BROOKLYN NORTH GERALD NELSON, Tax Id. 912370, Individually and in his Official Capacity, DEPUTY INSPECTOR STEVEN MAURIELLO, Tax Id. 895117, Individually and in his Official Capacity, CAPTAIN THEODORE LAUTERBORN, Tax Id. 897840, Individually and in his Official Capacity, LIEUTENANT JOSEPH GOFF, Tax Id. 894025, Individually and in his Official Capacity, SGT FREDERICK SAWYER, Shield No. 2576, Individually and in his Official Capacity, SERGEANT KURT DUNCAN, Shield No. 2483, Individually and in his Official Capacity, LIEUTENANT CHRISTOPHER BROSCHART, Tax Id. 915354, Individually and in his Official Capacity, LIEUTENANT TIMOTHY CAUGHEY, Tax Id. 885374, Individually and in his Official Capacity, SERGEANT SHANTEL JAMES, Shield No. 3004, and P.O.'s "JOHN DOE" #1-50, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown) (collectively referred to as "NYPD defendants"), JAMAICA HOSPITAL MEDICAL CENTER, DR. ISAK ISAKOV, Individually and in his Official Capacity, DR. LILIAN ALDANA-BERNIER, Individually and in her Official Capacity and JAMAICA HOSPITAL MEDICAL CENTER EMPLOYEE'S "JOHN DOE" # 1-50, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown),

Defendants.

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BRIAN E. LEE, declares the following pursuant to 28 USC §1746, under penalty of perjury:

That I am a Member of Ivone, Devine & Jensen, LLP, the attorneys for the defendant ISAK ISAKOV, M.D., and am fully familiar with the facts and circumstances of this action by virtue of a review of the file in my office.

That this Declaration is submitted in support of the instant motion for an Order granting the defendant ISAK ISAKOV, M.D. summary judgment dismissing all federal claims pleaded against Dr. Isakov pursuant to Rule 56 of the Federal Rules of Civil Procedure upon the grounds that there is no "state action" providing jurisdiction for this Court; for a further order granting summary judgment dismissing the claim pleaded for intentional infliction of emotional distress; and for an Order from this Court declining to exercise supplemental jurisdiction over plaintiff's pendent state law claim; and for such other and further relief as may be just and proper.

Attached hereto are the following Exhibits:

- Exhibit A: Plaintiff's Second Amended Complaint (Court docket 103)
- Exhibit B: Verified Answer of this Defendant Isakov to the Second Amended Complaint (Court docket 111)
- Exhibit C: Jamaica Hospital Medical Center record (filed under seal)
- Exhibit D: Portions of deposition of plaintiff Adrian Schoolcraft.
- Exhibit E: Copies of pertinent pages of testimony cited below from depositions of City employees and ambulance/EMT workers
- Exhibit F: Third Amended Complaint (Court docket 342)
- Exhibit G: Order of Judge Sweet dated January 16, 2015

As to Exhibit E, instead of attaching separate exhibits with virtually identical testimony, the following will quote the pertinent testimony from witnesses produced by

the City of New York, and reference them by page numbers in the upper right corner of the pages. All of this testimony is to the effect that the quoted City witnesses had no contact with Dr. Isakov and that each such witness did not instruct or give any directions to anyone at Jamaica Hospital medical Center, including Dr. Isakov.

Deputy Chief Michael Marino (Exhibit E, pages 1-10) testified on October 8, 2013. He was one of the Police Officers who responded to Adrian Schoolcraft's home. On Pages 410-411 of his deposition, under my questioning, Chief Marino was asked the following questions and gave the following answers:

- Q: Chief, did you ever go to Jamaica Hospital on the evening of October 31, 2009?
A: Absolutely not.
Q: Did you ever speak with any hospital personnel on October 31, 2009?
A: Absolutely not.
Q: Did you ever speak to any hospital personnel in the week after October 31, 2009?
A: Absolutely not.
Q: Did you ever speak to any doctors who treated Officer Schoolcraft at Jamaica Hospital during the week after October 31, 2009?
A: Absolutely not.
Q: Did you direct any EMS personnel, paramedics or NYPD employees to say anything to the people at Jamaica Hospital concerning Schoolcraft's condition?
A: Absolutely not.

Capt. Theodore Lauterborn (Exhibit E, pages 11-22) testified at a deposition on November 7, 2013. Under my questioning, at Pages 335-336, Capt. Lauterborn gave the following answers to my questions:

- Q: At any time on October 31 or thereafter, did you speak to any hospital personnel at any time?
A: No, I did not.
Q: Did you speak with any doctors or nurses from Jamaica Hospital at any time?
A: No, I did not.

Q: Did you ever instruct any NYPD personnel what to say to hospital personnel when the got there?

A: No, I did not.

Q: Did you ever speak with Dr. Isakov at any time?

A: No, I did not.

Lt. Timothy Caughey (Exhibit E, pages 23-31) testified on December 9, 2013. Upon questioning by Matthew Koster, Esq., the attorney for Dr. Aldana-Bernier, Lt. Caughey was asked the following questions and gave the following answers at pages 184-185:

Q: Did you ever speak with Dr. Aldana-Bernier regarding Adrian Schoolcraft?

A: No.

Q: Did you ever speak to Dr. Isakov regarding Adrian Schoolcraft?

A: No.

Q: Have you spoken to anyone at Jamaica Hospital regarding Adrian Schoolcraft?

A: No.

Q: Were you ever asked to provide any information to anyone connected with Jamaica Hospital regarding Adrian Schoolcraft?

A: No.

Then on further questioning by the undersigned, Lt. Caughey gave the following answer to my question:

Q: Did you instruct anybody to have any conversations with anybody at Jamaica Hospital?

A: No.

Deputy Inspector Steven Mauriello (Exhibit E, pages 32-40) testified on December 20, 2013. Upon questioning by Brian Osterman, Esq., an attorney for Jamaica Hospital, Inspector Mauriello gave the following answers to the following questions on pages 396-397 of that deposition:

Q: Do you have any contact or speak to anyone at Jamaica Hospital, any Jamaica Hospital personnel?

A: No.

Q: Did you have any contact or speak to any Jamaica Hospital doctors or nurses?
A: No.
Q: Did you instruct or direct anyone to have any contact or speak to anyone at Jamaica Hospital?
A: No.
Q: Did you have any contact or speak to Dr. Isakov?
A: No.
Q: Did you have any contact or speak to Dr. Aldana-Bernier?
A: No.

Sgt. Rasheena Huffman (Exhibit E, pages 41-48) testified on January 6, 2014. At Pages 174-175, Sgt. Huffman gave the following testimony in response to questions by Mr. Koster.

Q: Have you ever spoken to a Dr. Isakov concerning Adrian Schoolcraft?
A: Who?
Q: A Dr. Isakov.
A: I don't remember speaking to no Dr. Isakov. Who's that?
Q: Have you ever spoken to Aldana-Bernier concerning Adrian Schoolcraft?
A: No.
Q: Have you spoken with anyone from Jamaica Hospital about Adrian Schoolcraft?
A: No.
Q: Did you ever order anyone to give a statement to anyone from Jamaica Hospital?
A: No.
Q: Were you ever ordered to give a statement to anyone from Jamaica Hospital?
A: No.
Q: Were you ever ordered to provide information to anyone at Jamaica Hospital?
A: No.
Q: Did you ever order anyone to provide information at Jamaica Hospital
A: No.

Elise Hanlon (Exhibit E, pages 49-60), an EMT for the New York City Fire Department testified at a deposition on January 13, 2014. Lt. Hanlon was required to proceed to Mr. Schoolcraft's home because of his situation of being a barricaded EDP. At the scene she had contact with EMS personnel on an ambulance, but had no further contact

with the patient or hospital personnel after Mr. Schoolcraft was taken from the scene. Concluding the deposition on Pages 270-271 upon questioning by Mr. Osterman, the following questions and answers were given:

- Q: Lieutenant, I just have a few very quick. Other than what you have testified here today, did you have any contact or speak with any other staff or personnel at Jamaica Hospital at any time regarding Mr. Schoolcraft or the incident on October 31, 2009?
- A: No.
- Q: Did you have any contact or speak with any doctors or nurses at Jamaica Hospital regarding Mr. Schoolcraft or the incident on October 31, 2009?
- A: No.
- Q: Did you instruct or direct anyone to speak or contact anyone at Jamaica Hospital?
- A: No.
- Q: Did you speak with a Dr. Isakov at any time?
- A: No.
- Q: Did you speak with a Dr. Aldana-Bernier at any time?
- A: No.

Capt. Timothy Trainor (Exhibit E, pages 61-64) testified on April 10, 2014. At Pages 247-248, Capt. Trainor answered my questions as follows:

- Q: Did you ever speak to or do you know Dr. Isakov?
- A: No, I do not.
- Q: Do you know Dr. Aldana-Bernier?
- A: No.
- Q: Did you ever speak to her about Mr. Schoolcraft?
- A: No I did not.
- Q: Did you speak to anybody at Jamaica Hospital at any time?
- A: Regarding Schoolcraft?
- Q: Correct.
- A: Never.
- Q: Did you ever direct anybody from the NYPD to speak to anybody at Jamaica about Mr. Schoolcraft?
- A: Never.

Lt. William Gough (Exhibit E, pages 65-74) testified on April 11, 2014. On Pages 249-251 in response to questions by Mr. Koster, Lt. Gough gave the following answers.:

Q: Have you spoken with a Dr. Aldana-Bernier regarding Adrian Schoolcraft?
A: Never.
Q: Have you ever heard of Dr. Aldana Bernier?
A: I don't believe so.
Q: Have you ever heard of her outside the context of this lawsuit?
A: I don't think so.
Q: Have you ever heard of a Dr. Isakov?
A: I don't think so.
Q: Have you ever communicated in an way with Dr. Isakov?
A: No.
Q: Regarding Adrian Schoolcraft? Is that a no?
A: No.
Q: Were you ordered to provide any information to anyone at Jamaica Hospital?
A: No.
Q: Did you order anyone to provide any information to Jamaica Hospital
regarding Adrian Schoolcraft?
A: No.
Q: I believe you said that you did not go to Jamaica Hospital with --
A: I did not go to Jamaica Hospital.
Q: -- With Mr. Schoolcraft?
A: I did not.
Q: Did you speak to anyone at Jamaica Hospital regarding Adrian Schoolcraft?
A: No.

Jessica Marquez (Exhibit E, pages 75-82) testified on May 14, 2014. She is a basic EMT who was employed by Jamaica Hospital. She was one of two ambulance personnel who brought Mr. Schoolcraft to Jamaica Hospital on October 31, 2009. Other than information provided in the PCR form, she did not provide any other information to the triage nurse (Page 235). The following testimony ensued:

Q: Did you speak to any other nurse or any other medical personnel about Mr. Schoolcraft?
A: Just the registrar, so they could register him into the system for the triage nurse.
Q: Did you provide any information about the incident and Mr. Schoolcraft's home?
A: No.
Q: Did you ever speak with a Dr. Isakov about Mr. Schoolcraft?
A: No.

Q: Did you ever speak with Dr. Aldana-Bernier about Mr. Schoolcraft?
A: No.
Q: Did you give any directions to any personnel at Jamaica Hospital as to what to do with Mr. Schoolcraft as with regard to his treatment or care?
A: No.

Sal Sangianetti (Exhibit E, pages 83-95), who works for both the New York City Fire Dept. Emergency Medical Service as well as working as a Jamaica Hospital EMT, testified on May 15, 2014. On the day of October 31, 2009 he was working as a Jamaica Hospital EMT when he responded to the Schoolcraft situation.

In response to my questioning, on Pages 171-174 of his transcript the following testimony was given by Mr. Sangianetti:

Q: Did you ever speak to Dr. Isakov about Mr. Schoolcraft?
A: No.
Q: Did you every speak to Dr. Aldana-Bernier about Mr. Schoolcraft?
A: No.
Q: Did you speak to any medical personnel about Officer Schoolcraft?
A: No.
Q: At Jamaica Hospital?
A: No.
Q: When you went with the patient to the triage area did you speak to the triage nurse about Officer Schoolcraft?
A: No, actually.
Q: Did you give any instructions to anyone at the hospital concerning the care and treatment of Officer Schoolcraft?
A: No.

* * *

Q: Did anyone at the scene say that they wanted a psychiatric evaluation for Schoolcraft?
A: No.
Q: Did anyone at the scene say they wanted a psychiatric evaluation for Schoolcraft?
A: No.

Lt. Steven Weiss (Exhibit E, pages 96-98) testified on May 29, 2014. In questioning

by Mr. Osterman at Pages 191-192, the following testimony was given:

- Q: You testified that you never went to Jamaica Hospital?
A: Correct.
Q: And you never directed anyone to say anything to anyone at Jamaica Hospital?
A: No.
Q: Are you familiar with Dr. Isakov?
A: No.
Q: You ever have any conversations or contact with Dr. Isakov?
A: No.
Q: Are you familiar with Dr. Aldana-Bernier?
A: No.
Q: Did you ever have any conversations or contact with Dr. Aldana-Bernier?
A: No.

Sgt. Kurt Duncan (Exhibit E, pages 99-107) testified on June 23, 2014. In questioning by Mr. Osterman on Pages 269-271, the following testimony was given:

- Q: Sergeant, I just have few very quick questions. I believe you testified at your first deposition, the first session of your deposition, that after the incident at Schoolcraft's residence on October 31, 2009, you went back to the 81; is that right?
A: Correct.
Q: So you never went to Jamaica Hospital?
A: No.
Q: And did you ever speak or have any contact with any staff or physicians at Jamaica Hospital regarding Adrian Schoolcraft?
A: No.
Q: Did you ever direct anyone to speak to or have any contact with any staff or physicians at Jamaica Hospital?
A: Not that I recall.
Q: Are you familiar or do you recognize the name Dr. Isakov?
A: Not particularly.
Q: Have any contact with Dr. Isakov regarding Adrian Schoolcraft?
A: I don't remember.
Q: Do you remember the name Aldana-Bernier?
A: No, I don't.
Q: Did you have any contact with or speak to Dr. Aldana-Bernier regarding Adrian Schoolcraft?
A: Not that I recall.

The Deposition of Lt. Christopher Broschart (Exhibit E, pages 108-117) was held on June 18, 2014. He was one of the police officers who was with Schoolcraft in the Emergency Room in Jamaica Hospital Medical Center. On Pages 260-261 he gave the following testimony:

- Q: Did you ever speak to a Dr. Isakov?
A: I can't recall.
Q: Did you ever speak to Dr. Aldana-Bernier at Jamaica Hospital?
A: I don't know which doctors I spoke to.
Q: Other than the conversations you've related with the one doctor that you related Mr. Smith, did you have any other conversations with any nursing or hospital personnel?
A: Only people might be triage people.
Q: Do you recall anything you said to the triage people?
A: Not that I recall.
Q: Did you give any instructions to anybody at the hospital as to what to do with Schoolcraft?
A: No.

Lt. Broschart also indicated that until a doctor evaluated Mr. Schoolcraft at Jamaica Hospital "at that time he's an EDP he's in our custody for that 'til the doctor looks at him." Broschart deposition Page 192, Lines 13-15.

The deposition of Sgt. Shantel James (Exhibit E, pages 118-128) was held on May 12, 2014. Sgt. James had been asked by a Lt. Anderson "to go to the hospital and guard Schoolcraft for his safety" Page 51, Lines 12-14.

On Page 69, she gave the following testimony:

- Q: Did you receive any instructions from anybody at the hospital?
A: No.
Q: You give any instructions to anybody at the hospital?
A: No. I did not (objections omitted).

Page 69, Lines 9-17.

On Pages 145-147 in response to questions by Mr. Koster, she gave the following testimony:

- Q: Good afternoon. I have a couple of questions for you. Did you ever speak with a Dr. Aldana-Bernier at Jamaica Hospital about Adrian Schoolcraft?
- A: Not to my knowledge.
- Q: Did you ever speak to a Dr. Isakov at Jamaica Hospital regarding Adrian Schoolcraft?
- A: Not to my knowledge.
- Q: Did you ever direct anyone to provide any information to any physician at Jamaica Hospital?
- A: No, I did not.
- Q: Did you ever direct anyone to provide any information to any nurses or staff at Jamaica Hospital?
- A: No, I did not.
- Q: Did anyone request that you provide information to anyone at Jamaica Hospital regarding Adrian Schoolcraft?
- A: No.
- Q: Did anyone ask you to compile any information that they told you would be provided to anyone at Jamaica Hospital?
- A: No.

WHEREFORE, defendant ISAK ISAKOV, M.D. respectfully requests that the motion for summary judgment dismissing the complaint, and for the other requested relief, be granted in its entirety.

Dated: Lake Success, New York
January 30, 2015

Yours, etc.,

IVONE, DEVINE & JENSEN, LLP

/s/ Brian E. Lee

By:

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